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THE

UNIFORM TRUST RECEIPTS ACT

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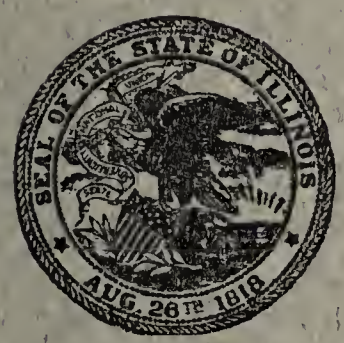

COMPILED BY
EDWARD J. HUGHES
Secretary of State

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TRUST RECEIPTS AND SECURITY TRANSACTIONS.

§ 1. Definitions.
§ 2. Defining a trust receipt and trust receipt transaction.
§ 3. Pledge or agreement without delivery or possession.
§ 4. Contract to give trust receipt.
§ 5. Validity between parties.
§ 6. Repossession—Default.
§ 7. General effect of entrusters—Filing or taking possession.
§ 8. Validity against creditors.
§ 9. Limitations on entrusters protection against purchasers.
§ 10. Entrusters rights to proceeds.
§ 11. Liens against entrusters.
§ 12. Responsibility of entrusters.
§ 13. Filing and refiling trust receipt transaction—Forms.
§ 14. Limitations.
§ 15. Not applicable to certain transaction.
§ 16. Election among filing statutes.
§ 17. Cases not provided for.
§ 18. Penalty.
§ 19. Uniformity of interpretation.
§ 20. Constitutionality.
§ 21. Provision of Act controlling.
§ 22. Title of Act.

(HOUSE BILL NO. 982. FILED JULY 12, 1935.)

AN ACT *concerning trust receipts and certain security transactions and to make uniform the law relating thereto.*

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

SECTION 1. That in this Act, unless the context or subject matter otherwise requires:

(1) "Buyer in the ordinary course of trade" means a person to whom goods are sold and delivered for new value and who acts in good faith and without actual knowledge of any limitation on the trustee's liberty of sale, including one who takes by conditional sale or under a pre-existing mercantile contract with the trustee to buy goods delivered, or like goods, for cash or on credit. "Buyer in the ordinary course of trade" does not include a pledgee, a mortgagee, a lienor, or a transferee in bulk.

(2) "Document" means any document of title to goods.

(3) "Entruster" means the person who has, or directly or by agent takes a security interest in goods, documents or instruments under a trust receipe transaction, and any successor in interest of such person. A person in the business of selling goods or instruments for profit, who at the outset of the transaction has, as against the buyer, general property in such goods or instruments, and who sells the same to the buyer on credit, retaining title or other security interest under a purchase money mortgage or conditional sales contract or otherwise, is excluded.

(4) "Goods" means any chattels personal other than money, choses in action, or things so affixed to land as to become a part thereof.

(5) "Instrument" means:

(a) Any negotiable instrument as defined in the uniform negotiable instruments law and amendments thereto, or

(b) Any certificate of stock, or bond or debenture for the payment of money issued by a public or private corporation as part of a series, or

(c) Any interim, deposit, or participation certificate or receipt, or other credit or investment instrument of a sort marketed in the ordinary course of business of finance, of which the trustee, after the trust receipt transaction, appears by virtue of possession and the face of the

instrument to be the owner. "Instrument" does not include any document of title to goods.

(6) "Lien creditor" means any creditor who has acquired a specific lien on the goods, documents or instruments by attachment, levy, or by any other similar operation of law or judicial process, including a distraining landlord.

(7) "New value" includes new advances or loans made, and the renewal and extension of such advances or loans, or new obligation incurred, or the release or surrender of a valid and existing security interest, or the release of a claim to proceeds under section ten of this Act.

(8) "Person" means, as the case may be, an individual, trustee, receiver or other fiduciary, partnership, corporation, business trust, or other association, and two or more persons having a joint or common interest.

(9) "Possession," as used in this Act with reference to possession taken or retained by the entruster, means actual possession of goods, documents or instruments, or, in the case of goods, such constructive possession as, by means of tags or signs or other outward marks placed and remaining in conspicuous places, may reasonably be expected in fact to indicate to the third party in question that the entruster has control over or interest in the goods.

(10) "Purchase" means taking by sale, conditional sale, lease, mortgage, or pledge, legal or equitable.

(11) "Purchaser" means any person taking by purchase. A pledgee, mortgagee or other claimant of a security interest created by contract is, in so far as concerns his specific security, a purchaser and not a creditor.

(12) "Security interest" means a property interest in goods, documents or instruments, limited in extent to securing performance of some obligation of the trustee or of some third person to the entruster, and includes the interest of a pledgee, and title, whether or not expressed to be absolute, whenever such title is in substance taken or retained for security only.

(13) "Transferee in bulk" means a mortgage or a pledgee or a buyer of the trustee's business substantially as a whole.

(14) "Trustee" means the person having or taking possession of goods, documents or instruments under a trust receipt transaction, and any successor in interest of such person. The use of the word "trustee" herein shall not be interpreted or construed to imply the existence of a trust or any right or duty of a trustee in the sense of equity jurisprudence other than as provided by this Act.

(15) "Value" means any consideration sufficient to support a simple contract. Any antecedent or pre-existing claim, whether for money or not, and whether against the transferror or against another person, constitutes value where goods, documents or instruments are taken either in satisfaction thereof or as security therefor.

§ 2. What constitutes trust receipt transaction and trust receipt.

(1) A trust receipt transaction within the meaning of this Act is any transaction to which an entruster and a trustee are parties for one of the purposes set forth in subsection three of this section, whereby

(a) The entruster or any third person delivers to the trustee goods, documents or instruments in which the entruster prior to transaction has, or for new value by the transaction acquires or as a result thereof is to acquire promptly, a security interest; or

(b) The entruster gives new value in reliance upon the transfer by the trustee to such entruster of a security interest in instruments or documents which are actually exhibited to such entruster, or to his agent in that behalf, at a place of business of either entruster or agent, but possession of which is retained by the trustee; or (c) the entruster gives new value in reliance upon the transfer by the trustee to such entruster of a security interest in goods or documents in possession of the trustee and the possession of which is retained by the trustee; *provided,* that the delivery under paragraph (a) or the giving of new value under paragraph (b) or (c) either

(I) Be against the signing and delivery by the trustee of a writing designating the goods, documents or instruments concerned, and reciting that a security interest therein remains or will remain, or has passed to or will pass to, the entruster, or

(II) Be pursuant to a prior or concurrent written and signed agreement of the trustee to give such a writing.

The security interest of the entruster may be derived from the trustee or from any other person, and by pledge or by transfer of title or otherwise.

If the trustee's right in the goods, documents or instruments are subject to a prior trust receipt transaction, or to a prior equitable pledge, section nine and section three, respectively, of this Act, determine the priorities.

(2) A writing such as is described in subsection one, paragraph (I), of this section signed by the trustee, and given in or pursuant to such a transaction, is designated in this Act as a "trust receipt". No further formality of execution or authentication shall be necessary to the validity of a trust receipt.

(3) A transaction shall not be deemed a trust receipt transaction unless the possession of the trustee thereunder is for a purpose substantially equivalent to any one of the following:

(a) In the case of goods, documents or instruments, for the purpose of selling or exchanging them, or of procuring their sale or exchange; or

(b) In the case of goods or documents, for the purpose of manufacturing or processing the goods delivered or covered by the documents, with the purpose of ultimate sale, or for the purpose of loading, unloading, storing, shipping, transhipping or otherwise dealing with them in a manner preliminary to or necessary to their sale; or

(c) In the case of instruments, for the purpose of delivering them to a principal, under whom the trustee is holding them, or for the consummation of some transaction involving delivery to a depository or registrar, or for their presentation, collection, or renewal.

§ 3. Attempted creation or continuance of pledge without delivery or retention of possession.

(1) An attempted pledge or agreement to pledge not accompanied by delivery of possession, which does not fulfill the requirements of a trust receipt transaction, shall be valid as against creditors of the pledgor only as follows:

(a) To the extent that new value is given by the pledgee in reliance thereon, such pledge or agreement to pledge shall be valid as against all creditors with or without notice, for ten days from the time the new value is given;

(b) To the extent that the value given by the pledgee is not new value, and in the case of new value after the lapse of ten days from the giving thereof, the pledge shall have validity as against lien creditors without notice, who become such as prescribed in section eight, only as of the time the pledgee takes possession, and without relation back.

(2) Purchasers (including entrusters) for value and without notice of the pledgee's interest shall take free of any such pledge or agreement to pledge unless, prior to the purchase, it has been perfected by possession taken.

(3) Where, under circumstances not constituting a trust receipt transaction, a person for a temporary and limited purpose, delivers goods, documents or instruments, in which he holds a pledgee's or other security interest, to the person holding beneficial interest therein, the transaction has like effect with a purported pledge for a new value under this section.

§ 4. Contract to give trust receipt.

(1) A contract to give a trust receipt, if in writing and signed by the trustee, shall, with reference to the goods, documents or instruments thereafter delivered by the entruster to the trustee in reliance on such contract and with reference to goods, documents and instruments in trustee's possession for a security interest in which entruster thereafter gives new value to trustee, be equivalent in all respects to a trust receipt.

(2) Such a contract shall as to such goods, documents, or instruments be specifically enforceable against the trustee; but this subsection shall not enlarge the scope of the entruster's rights against creditors of the trustee as limited by this Act.

§ 5. Validity between the parties. Between the entruster and the trustee the terms of the trust receipt shall, save as otherwise provided by this Act, be valid and enforceable. But no provision for forfeiture of the trustee's interest shall be valid except as provided in subsection five of section 6.

§ 6. Repossession, and the entruster's rights on default.

(1) The entruster shall be entitled as against the trustee to possession of the goods, documents or instruments on default and as may be otherwise specified in the trust receipt.

(2) An entruster entitled to possession under the term of the trust receipt or of subsection one of this section may take such possession without legal process, whenever that is possible without breach of the peace.

(3) (a) After possession taken, the entruster shall subject to paragraph (b) of this subsection and to subsection five, hold such goods, documents or instruments with the rights and duties of the pledgee.

(b) An entruster in possession may, on or after default, give notice to the trustee of intention to sell, and may, not less than five days after the serving or sending of such notice, sell the goods, documents or instruments for the trustee's account at public or private sale, and may at a public sale himself become a purchaser. The proceeds of any such sale, whether public or private shall be applied (I) to the payment of the expense thereof, (II) to the payment of the expenses of retaking, keeping and storing the goods, documents, or instruments, (III) to the satisfaction of the trustee's indebtedness. The trustee shall receive any surplus and shall be liable to the entruster for any deficiency. Notice of sale shall be deemed sufficiently given if in writing, and either (I) personally served on the trustee, or (II) sent by post-paid ordinary mail to the trustee's last known business address.

(c) A purchaser in good faith and for value from an entruster in possession takes free of the trustee's interest, even in a case in which the entruster is liable to the trustee for conversion.

(4) Surrender of the trustee's interest to the entruster shall be valid, on any terms upon which the trustee and the entruster may, after default, agree.

(5) As to articles manufactured by style or model, the terms of the trust receipt may provide for forfeiture of the trustee's interest, at the election of the entruster, and as an alternative to the remedies hereinbefore provided, in the event of the trustee's default, against cancellation of the trustee's then remaining indebtedness; *provided,* that in case of the original maturity of such an indebtedness there must be cancelled not less than 80% of the original indebtedness; or in case of a first renewal, not less than 70%, or in case of a second or further renewal not less than 60%.

§ 7. General effect of entruster's filing or taking possession.

(1) (a) If the entruster within the period of thirty days specified in subsection one of section eight files as in this Act provided, such filing shall be effective to preserve his security interest in documents for goods against all persons, save as otherwise provided.

(b) Filing after the lapse of the said period shall be valid; but in such event, save as provided in paragraph (b) of subsection two of section nine, the entruster's security interest shall be deemed to be created by the trustee as of the time of such filing, without relation back, as against all persons not having notice of such interest.

(2) The taking of possession by the entruster shall, so long as such possession is retained, have the effect of filing, in the case of goods or documents; and of notice of the entruster's security interest to all persons in the case of instruments.

§ 8. Validity against creditors. (1) The entruster's security interest in goods, documents or instruments under the written terms of a trust receipt transaction, shall without any filing be valid as against all creditors of the trustee, with or without notice, for thirty days after delivery of the goods, documents or instruments to the trustee, and thereafter except as in this Act otherwise provided. But where the trustee at the time of the trust receipt transaction has and retains goods, documents or instruments, the thirty days shall be reckoned, in the case

of goods or documents from the time the entruster gives new value under the transaction and in the case of instruments from the time such instruments are actually shown to the entruster or from the time that the entruster gives new value, whichever is prior.

(2) Save as provided in subsection one of this section, the entruster's security interest shall be void as against lien creditors who become such after such thirty day period and without notice of such interest and before filing.

(3) Unless prior to the acquisition of notice by all creditors filing has occurred or possession has been taken by the entruster, (I) an assignee for the benefit of creditors, from the time of assignment, or (II) a receiver in equity from the time of his appointment, or (III) a trustee in bankruptcy or in judicial insolvency proceedings from the time of filing of the petition in bankruptcy or judicial insolvency by or against the trustee shall, on behalf of all creditors, stand in the position of a lien creditor without notice, without reference to whether he personally has or has not, in fact, notice of the entruster's interest.

§ 9. Limitations on entruster's protection against purchasers.

(1) Purchasers of negotiable documents or instruments.

(a) Nothing in this Act shall limit the rights of purchasers in good faith and for value from the trustee of negotiable instruments or negotiable documents, and purchasers taking from the trustee for value, in good faith, and by transfer in the customary manner, instruments, in such forms as are by common practice purchased and sold as if negotiable; and they shall hold such instruments free of the entruster's interest; and filing under this Act shall not be deemed to constitute notice of the entruster's interest to purchasers in good faith and for value of such documents or instruments, other than transferees in bulk.

(b) The entrusting (directly, by agent, or through the intervention of a third person) of goods, documents, or instruments by an entruster to a trustee, under a trust receipt transaction or a transaction falling within section three of this Act, shall be equivalent to the like entrusting of any documents or instruments which the trustee may procure in substitution, or which represent the same goods or instruments or the proceeds thereof, and which the trustee negotiates to a purchaser in good faith and for value.

(2) Where a purchaser from the trustee is not protected under subsection one hereof, the following rules shall govern:

(a) Sales by trustee in the ordinary course of trade.

(I) Where the trustee, under the trust receipt transaction, has liberty of sale and sells to a buyer in the ordinary course of trade, whether before or after the expiration of the thirty day period specified in subsection one of section eight of this Act, and whether or not filing has taken place, such buyer takes free of the entruster's security interest in the goods so sold, and no filing shall constitute notice of the entruster's security interest to such a buyer.

(II) No limitation placed by the entruster on the liberty of sale granted to the trustee shall affect a buyer in the ordinary course of trade, unless the limitation is actually known to the latter.

(b) Purchasers other than buyers in the ordinary course of trade. In the absence of filing, the entruster's security interest in goods shall be valid, as against purchasers, save as provided in this section; but any purchaser, not a buyer in the ordinary course of trade, who, in good faith and without notice of the entruster's security interest and before filing, either (I) gives new value before the expiration of the thirty day period specified in subsection one of section eight, or (II) gives value after said period, and who in either event before filing also obtains deliverey of goods from a trustee shall hold the subject matter of his purchase free of the entruster's security interest; but a transferee in bulk can take only under (II) of this paragraph (b).

(c) Liberty of Sale. If the entruster consents to the placing of goods subject to a trust receipt transaction in the trustee's stock in trade or in his sale or exhibition rooms, or allows such goods to be so placed or kept, such consent or allowance shall have like effect as granting the trustee liberty of sale.

(3) As to all cases covered by this section the purchase of goods, documents or instruments on credit shall constitute a purchase for new value, but the entruster shall be entitled to any debt owing to the trustee and any security therefor, by reason of such purchase; except that the entruster's right shall be subject to any set-off or defense valid against the trustee and accruing before the purchaser has actual notice of the entruster's interest.

§ 10. Entruster's rights to proceeds. Where, under the terms of the trust receipt transaction, the trustee has no liberty of sale or other disposition, or, having liberty of sale or other disposition, is to account to the entruster for the proceeds of any disposition of the goods, documents or instruments, the entruster shall be entitled, to the extent to which and as against all classes of persons as to whom his security interest was valid at the time of disposition by the trustee, as follows:

(a) To the debts described in subsection three of section nine hereof; and also

(b) To any proceeds or the value of any proceeds (whether such proceeds are identifiable or not) of the goods, documents or instruments, if said proceeds were received by the trustee within ten days prior to either application for appointment of a receiver of the trustee, or the filing of a petition in bankruptcy or judicial insolvency proceedings by or against the trustee, or demand made by the entruster for prompt accounting; and to a priority to the amount of such proceeds or value; and also

(c) To any other proceeds of the goods, documents or instruments which are identifiable.

§ 11. Liens in course of business good against entruster. Specific liens arising out of contractual acts of the trustee with reference to the processing, warehousing, shipping or otherwise dealing with specific goods in the usual course of the trustee's business preparatory to their sale shall attach against the interest of the entruster in said goods as well as against the interest of the trustee, whether or not filing has occurred under this Act; but this section shall not obligate the entruster

personally for any debt secured by such lien; nor shall it be construed to include the lien of a landlord.

§ 12. Entruster not responsible on sale by trustee. An entruster holding a security interest shall not, merely by virtue of such interest or of his having given the trustee liberty of sale or other disposition, be responsible as principal or as vendor under any sale or contract to sell made by the trustee.

§ 13. Filing and refiling concerning trust receipt transactions covering documents or goods. (1) Any entruster undertaking or contemplating trust receipt transactions with reference to documents or goods is entiled to file with the Secretary of State a statement, signed by the entruster and the trustee, containing:

(a) A designation of the entruster and the trustee, and of the chief place of business of each within this State, if any; and if the entruster has no place of business within the State, a designation of his chief place of business outside the State; and

(b) A statement that the entruster is engaged, or expects to be engaged, in financing under trust receipt transactions the acquisition of goods by the trustee; and

(c) A description of the kind or kinds of goods covered or to be covered by such financing.

(2) The following form of statement (or any other form of statement containing substantially the same information) shall suffice for the purposes of this Act:

'Statement of Trust Receipt Financing"

"The entruster,.....whose chief place of business within this State is at....., (or who has no place of business within this State and whose chief place of business outside this State is at.....), is or expects to be engaged in financing under trust receipt transactions the acquisition by the trustee,.....whose chief place of business within this State is at.....of goods of the following description; (coffee, silk, automobiles, or the like).

(Signed).....Entruster
(Signed).....Trustee."

(3) It shall be the duty of the filing officer to mark each statement filed with a consecutive file number, and with the date and hour of filing, and to keep such statement in a separate file; and to note and index the filing in a suitable index, indexed according to the name of the trustee and containing a notation of the trustee's chief place of business as given in the statement. The fee for such filing shall be one dollar.

(4) Presentation for filing of the statement described in subsection one, and payment of the filing fee, shall constitute filing under this Act in favor of the entruster, as to any document or goods falling within the description in the statement which are within one year from the date of such filing, or have been, within thirty days previous to such filing, the subject-matter of a trust receipt transaction between the entruster and the trustee.

(5) At any time before expiration of the validity of the filing, as specified in subsection four, a like statement, or an affidavit by the en-

truster alone, setting out the information required by subsection one, may be filed in like manner as the original filing. Any filing of such further statement or affidavit shall be valid in like manner and for like period as an original filing, and shall also continue the rank of the entruster's existing security interest as against all junior interests. It shall be the duty of the filing officer to mark, file and index the further statement or affidavit in like manner as the original.

§ 14. Limitations on extent of obligation secured. As against purchasers and creditors, the entruster's security interest may extend to any obligation for which the goods, documents or instruments were security before the trust receipt transaction, and to any new value given or agreed to be given as a part of such transaction; but not, otherwise, to secure past indebtedness of the trustee; nor shall the obligation secured under any trust receipt transaction extend to obligations of the trustee to be subsequently created.

§ 15. Act not applicable to certain transactions. This Act shall not apply to single transactions of legal or equitable pledge, not constituting a course of business, whether such transactions be unaccompanied by delivery of possession, or involved constructive delivery, or delivery and re-delivery, actual or constructive, so far as such transactions involve only an entruster who is an individual natural person, and a trustee entrusted as a fiduciary with handling investments or finances of the entruster; nor shall it apply to transactions of bailment or consignment in which the title of the bailor or consignor is not retained to secure an indebtedness to him of the bailee or consignee.

§ 16. Election among filing statutes. As to any transaction falling within the provisions both of this Act and of any other law requiring filing or recording, the entruster shall not be required to comply with both, but by complying with the provisions of either at his election may have the protection given by the law complied with; except that buyers in the ordinary course of trade as described in subsection two of section nine, and lienors as described in section eleven, shall be protected as therein provided, although the compliance of the entruster be with the filing or recording requirements of another law.

§ 17. Cases not provided for. In any case not provided for in this Act the rules of law and equity, including the law merchant, shall continue to apply to trust receipt transactions and purported pledge transactions not accompanied by delivery of possession.

§ 18. Where under the terms of a trust receipt transaction the trustee has no liberty of sale or other disposition or having liberty of sale or other disposition is to account to the entruster for the proceeds for any disposition of the goods, documents or instruments and where the trustee disposes of the goods, documents or instruments and fails to pay the entruster the amount due under the trust receipt, he shall be deemed guilty of a felony and shall be imprisoned in the penitentiary for not less than one year and not more than ten years in the discretion of the court.

§ 19. Uniformity of interpretation. This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

§ 20. Constitutionality. If any provisions of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

§ 21. Provisions of Act controlling. Notwithstanding the provisions of any general or special law, the provisions of this Act shall control, *provided, however,* that this Act shall not affect transactions entered into before the effective date of this Act.

§ 22. This Act may be cited as the Uniform Trust Receipts Act.

FILED July 12, 1935.

The Governor having failed to return this bill to the General Assembly during its session, and having failed to file it in my office, with his objections, within ten days after the adjournment of the General Assembly, it has thereby become a law.

Witness my hand this 12th day of July, A. D. 1935.

EDWARD J. HUGHES,
Secretary of State.

COMPILED BY

EDWARD J. HUGHES

Secretary of State.

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(3) "Entruster" means the person who has, or directly or by agent takes a security interest in goods, documents or instruments under a trust receipe transaction, and any successor in interest of such person. A person in the business of selling goods or instruments for profit, who at the outset of the transaction has, as against the buyer, general property in such goods or instruments, and who sells the same to the buyer on credit, retaining title or other security interest under a purchase money mortgage or conditional sales contract or otherwise, is excluded.

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(13) "Transferee in bulk" means a mortgage or a pledgee or a buyer of the trustee's business substantially as a whole.

(14) "Trustee" means the person having or taking possession of goods, documents or instruments under a trust receipt transaction, and any successor in interest of such person. The use of the word "trustee" herein shall not be interpreted or construed to imply the existence of a trust or any right or duty of a trustee in the sense of equity jurisprudence other than as provided by this Act.

(15) "Value" means any consideration sufficient to support a simple contract. Any antecedent or pre-existing claim, whether for money or not, and whether against the transferror or against another person, constitutes value where goods, documents or instruments are taken either in satisfaction thereof or as security therefor.

§ 2. What constitutes trust receipt transaction and trust receipt.

(1) A trust receipt transaction within the meaning of this Act is any transaction to which an entruster and a trustee are parties for one of the purposes set forth in subsection three of this section, whereby

(a) The entruster or any third person delivers to the trustee goods, documents or instruments in which the entruster prior to transaction has, or for new value by the transaction acquires or as a result thereof is to acquire promptly, a security interest; or

(b) The entruster gives new value in reliance upon the transfer by the trustee to such entruster of a security interest in instruments or documents which are actually exhibited to such entruster, or to his agent in that behalf, at a place of business of either entruster or agent, but possession of which is retained by the trustee; or (c) the entruster gives new value in reliance upon the transfer by the trustee to such entruster of a security interest in goods or documents in possession of the trustee and the possession of which is retained by the trustee; *provided,* that the delivery under paragraph (a) or the giving of new value under paragraph (b) or (c) either

(I) Be against the signing and delivery by the trustee of a writing designating the goods, documents or instruments concerned, and reciting that a security interest therein remains or will remain, or has passed to or will pass to, the entruster, or

(II) Be pursuant to a prior or concurrent written and signed agreement of the trustee to give such a writing.

The security interest of the entruster may be derived from the trustee or from any other person, and by pledge or by transfer of title or otherwise.

If the trustee's right in the goods, documents or instruments are subject to a prior trust receipt transaction, or to a prior equitable pledge, section nine and section three, respectively, of this Act, determine the priorities.

(2) A writing such as is described in subsection one, paragraph (I), of this section signed by the trustee, and given in or pursuant to such a transaction, is designated in this Act as a "trust receipt". No further formality of execution or authentication shall be necessary to the validity of a trust receipt.

(3) A transaction shall not be deemed a trust receipt transaction unless the possession of the trustee thereunder is for a purpose substantially equivalent to any one of the following:

(a) In the case of goods, documents or instruments, for the purpose of selling or exchanging them, or of procuring their sale or exchange; or

(b) In the case of goods or documents, for the purpose of manufacturing or processing the goods delivered or covered by the documents, with the purpose of ultimate sale, or for the purpose of loading, unloading, storing, shipping, transhipping or otherwise dealing with them in a manner preliminary to or necessary to their sale; or

(c) In the case of instruments, for the purpose of delivering them to a principal, under whom the trustee is holding them, or for the consummation of some transaction involving delivery to a depository or registrar, or for their presentation, collection, or renewal.

§ 3. Attempted creation or continuance of pledge without delivery or retention of possession.

(1) An attempted pledge or agreement to pledge not accompanied by delivery of possession, which does not fulfill the requirements of a trust receipt transaction, shall be valid as against creditors of the pledgor only as follows:

(a) To the extent that new value is given by the pledgee in reliance thereon, such pledge or agreement to pledge shall be valid as against all creditors with or without notice, for ten days from the time the new value is given;

(b) To the extent that the value given by the pledgee is not new value, and in the case of new value after the lapse of ten days from the giving thereof, the pledge shall have validity as against lien creditors without notice, who become such as prescribed in section eight, only as of the time the pledgee takes possession, and without relation back.

(2) Purchasers (including entrusters) for value and without notice of the pledgee's interest shall take free of any such pledge or agreement to pledge unless, prior to the purchase, it has been perfected by possession taken.

(3) Where, under circumstances not constituting a trust receipt transaction, a person for a temporary and limited purpose, delivers goods, documents or instruments, in which he holds a pledgee's or other security interest, to the person holding beneficial interest therein, the transaction has like effect with a purported pledge for a new value under this section.

§ 4. Contract to give trust receipt.

(1) A contract to give a trust receipt, if in writing and signed by the trustee, shall, with reference to the goods, documents or instruments thereafter delivered by the entruster to the trustee in reliance on such contract and with reference to goods, documents and instruments in trustee's possession for a security interest in which entruster thereafter gives new value to trustee, be equivalent in all respects to a trust receipt.

(2) Such a contract shall as to such goods, documents, or instruments be specifically enforceable against the trustee; but this subsection shall not enlarge the scope of the entruster's rights against creditors of the trustee as limited by this Act.

§ 5. Validity between the parties. Between the entruster and the trustee the terms of the trust receipt shall, save as otherwise provided by this Act, be valid and enforceable. But no provision for forfeiture of the trustee's interest shall be valid except as provided in subsection five of section 6.

§ 6. Repossession, and the entruster's rights on default.

(1) The entruster shall be entitled as against the trustee to possession of the goods, documents or instruments on default and as may be otherwise specified in the trust receipt.

(2) An entruster entitled to possession under the term of the trust receipt or of subsection one of this section may take such possession without legal process, whenever that is possible without breach of the peace.

(3) (a) After possession taken, the entruster shall subject to paragraph (b) of this subsection and to subsection five, hold such goods, documents or instruments with the rights and duties of the pledgee.

(b) An entruster in possession may, on or after default, give notice to the trustee of intention to sell, and may, not less than five days after the serving or sending of such notice, sell the goods, documents or instruments for the trustee's account at public or private sale, and may at a public sale himself become a purchaser. The proceeds of any such sale, whether public or private shall be applied (I) to the payment of the expense thereof, (II) to the payment of the expenses of retaking, keeping and storing the goods, documents, or instruments, (III) to the satisfaction of the trustee's indebtedness. The trustee shall receive any surplus and shall be liable to the entruster for any deficiency. Notice of sale shall be deemed sufficiently given if in writing, and either (I) personally served on the trustee, or (II) sent by post-paid ordinary mail to the trustee's last known business address.

(c) A purchaser in good faith and for value from an entruster in possession takes free of the trustee's interest, even in a case in which the entruster is liable to the trustee for conversion.

(4) Surrender of the trustee's interest to the entruster shall be valid, on any terms upon which the trustee and the entruster may, after default, agree.

(5) As to articles manufactured by style or model, the terms of the trust receipt may provide for forfeiture of the trustee's interest, at the election of the entruster, and as an alternative to the remedies hereinbefore provided, in the event of the trustee's default, against cancellation of the trustee's then remaining indebtedness; *provided*, that in case of the original maturity of such an indebtedness there must be cancelled not less than 80% of the original indebtedness; or in case of a first renewal, not less than 70%, or in case of a second or further renewal not less than 60%.

§ 7. General effect of entruster's filing or taking possession.

(1) (a) If the entruster within the period of thirty days specified in subsection one of section eight files as in this Act provided, such filing shall be effective to preserve his security interest in documents for goods against all persons, save as otherwise provided.

(b) Filing after the lapse of the said period shall be valid; but in such event, save as provided in paragraph (b) of subsection two of section nine, the entruster's security interest shall be deemed to

be created by the trustee as of the time of such filing, without relation back, as against all persons not having notice of such interest.

(2) The taking of possession by the entruster shall, so long as such possession in retained, have the effect of filing, in the case of goods or documents; and of notice of the entruster's security interest to all persons in the case of instruments.

§ 8. Validity against creditors. (1) The entruster's security interest in goods, documents or instruments under the written terms of a trust receipt transaction, shall without any filing be valid as against all creditors of the trustee, with or without notice, for thirty days after delivery of the goods, documents or instruments to the trustee, and thereafter except as in this Act otherwise provided. But where the trustee at the time of the trust receipt transaction has and retains goods, documents or instruments, the thirty days shall be reckoned, in the case of goods or documents from the time the entruster gives new value under the transaction and in the case of instruments from the time such instruments are actually shown to the entruster or from the time that the entruster gives new value, whichever is prior.

(2) Save as provided in subsection one of this section, the entruster's security interest shall be void as against lien creditors who become such after such thirty day period and without notice of such interest and before filing.

(3) Unless prior to the acquisition of notice by all creditors filing has occurred or possession has been taken by the entruster, (I) an assignee for the benefit of creditors, from the time of assignment, or (II) a receiver in equity from the time of his appointment, or (III) a trustee in bankruptcy or in judicial insolvency proceedings from the time of filing of the petition in bankruptcy or judicial insolvency by or against the trustee shall, on behalf of all creditors, stand in the position of a lien creditor without notice, without reference to whether he personally has or has not, in fact, notice of the entruster's interest.

§9. Limitations on entruster's protection against purchasers.

(1) Purchasers of negotiable documents or instruments.

(a) Nothing in this Act shall limit the rights of purchasers in good faith and for value from the trustee of negotiable instruments or negotiable documents, and purchasers taking from the trustee for value, in good faith, and by transfer in the customary manner, instruments, in such forms as are by common practice purchased and sold as if negotiable; and they shall hold such instruments free of the entruster's interest; and filing under this Act shall not be deemed to constitute notice of the entruster's interest to purchasers in good faith and for value of such documents or instruments, other than transferees in bulk.

(b) The entrusting (directly, by agent, or through the intervention of a third person) of goods, documents, or instruments by an entruster to a trustee, under a trust receipt transaction or a

transaction falling within section three of this Act, shall be equivalent to the like entrusting of any documents or instruments which the trustee may procure in substitution, or which represent the same goods or instruments or the proceeds thereof, and which the trustee negotiates to a purchaser in good faith and for value.

(2) Where a purchaser from the trustee is not protected under subsection one hereof, the following rules shall govern:

(a) Sales by trustee in the ordinary course of trade.

(I) Where the trustee, under the trust receipt transaction, has liberty of sale and sells to a buyer in the ordinary course of trade, whether before or after the expiration of the thirty day period specified in subsection one of section eight of this Act, and whether or not filing has taken place, such buyer takes free of the entruster's security interest in the goods so sold, and no filing shall constitute notice of the entruster's security interest to such a buyer.

(II) No limitation placed by the entruster on the liberty of sale granted to the trustee shall affect a buyer in the ordinary course of trade, unless the limitation is actually known to the latter.

(b) Purchasers other than buyers in the ordinary course of trade. In the absence of filing, the entruster's security interest in goods shall be valid, as against purchasers, save as provided in this section; but any purchaser, not a buyer in the ordinary course of trade, who, in good faith and without notice of the entruster's security interest and before filing, either (I) gives new value before the expiration of the thirty day period specified in subsection one of section eight, or (II) gives value after said period, and who in either event before filing also obtains delivery of goods from a trustee shall hold the subject matter of his purchase free of the entruster's security interest; but a transferee in bulk can take only under (II) of this paragraph (b).

(c) Liberty of Sale. If the entruster consents to the placing of goods subject to a trust receipt transaction in the trustee's stock in trade or in his sale or exhibition rooms, or allows such goods to be so placed or kept, such consent or allowance shall have like effect as granting the trustee liberty of sale.

(3) As to all cases covered by this section the purchase of goods, documents or instruments on credit shall constitute a purchase for new value, but the entruster shall be entitled to any debt owing to the trustee and any security therefor, by reason of such purchase; except that the entruster's right shall be subject to any set-off or defense valid against the trustee and accruing before the purchaser has actual notice of the entruster's interest.

§ 10. Entruster's rights to proceeds. Where, under the terms of the trust receipt transaction, the trustee has no liberty of sale or other disposition, or, having liberty of sale or other disposition, is to account to the entruster for the proceeds of any disposition of the goods, documents or instruments, the entruster shall be entitled,

to the extent to which and as against all classes of persons as to whom his security interest was valid at the time of disposition by the trustee, as follows:

(a) To the debts described in subsection three of section nine hereof; and also

(b) To any proceeds or the value of any proceeds (whether such proceeds are identifiable or not) of the goods, documents or instruments, if said proceeds were received by the trustee within ten days prior to either application for appointment of a receiver of the trustee, or the filing of a petition in bankruptcy or judicial insolvency proceedings by or against the trustee, or demand made by the entruster for prompt accounting; and to a priority to the amount of such proceeds or value; and also

(c) To any other proceeds of the goods, documents or instruments which are identifiable.

§ 11. Liens in course of business good against entruster. Specific liens arising out of contractual acts of the trustee with reference to the processing, warehousing, shipping or otherwise dealing with specific goods in the usual course of the trustee's business preparatory to their sale shall attach against the interest of the entruster in said goods as well as against the interest of the trustee, whether or not filing has occurred under this Act; but this section shall not obligate the entruster personally for any debt secured by such lien; nor shall it be construed to include the lien of a landlord.

§ 12. Entruster not responsible on sale by trustee. An entruster holding a security interest shall not, merely by virtue of such interest or of his having given the trustee liberty of sale or other disposition, be responsible as principal or as vendor under any sale or contract to sell made by the trustee.

§ 13. Filing and refiling concerning trust receipt transactions covering documents or goods. (1) Any entruster undertaking or contemplating trust receipt transactions with reference to documents or goods is entitled to file with the Secretary of State a statement, signed by the entruster and the trustee, containing:

(a) A designation of the entruster and the trustee, and of the chief place of business of each within this State, if any; and if the entruster has no place of business within the State, a designation of his chief place of business outside the State; and

(b) A statement that the entruster is engaged, or expects to be engaged, in financing under trust receipt transactions the acquisition of goods by the trustee; and

(c) A description of the kind or kinds of goods covered or to be covered by such financing.

(2) The following form of statement (or any other form of statement containing substantially the same information) shall suffice for the purposes of this Act:

"Statement of Trust Receipt Financing"

"The entruster,.....whose chief place of business within this State is at....., (or who has no place of business within this State and whose chief place of business outside this State is at.....), is or expects to be engaged in financing under trust receipt transactions the acquisition by the trustee,.....whose chief place of business within this State is at.....of goods of the following description; (coffee, silk, automobiles, or the like).

(Signed).....Entruster

(Signed).....Trustee."

(3) It shall be the duty of the filing officer to mark each statement filed with a consecutive file number, and with the date and hour of filing, and to keep such statement in a separate file; and to note and index the filing in a suitable index, indexed according to the name of the trustee and containing a notation of the trustee's chief place of business as given in the statement. The fee for such filing shall be one dollar.

(4) Presentation for filing of the statement described in subsection one, and payment of the filing fee, shall constitute filing under this Act in favor of the entruster, as to any document or goods falling within the description in the statement which are within one year from the date of such filing, or have been, within thirty days previous to such filing, the subject-matter of a trust receipt transaction between the entruster and the trustee.

(5) At any time before expiration of the validity of the filing, as specified in subsection four, a like statement, or an affidavit by the entruster alone, setting out the information required by subsection one, may be filed in like manner as the original filing. Any filing of such further statement or affidavit shall be valid in like manner and for like period as an original filing, and shall also continue the rank of the entruster's existing security interest as against all junior interests. It shall be the duty of the filing officer to mark, file and index the further statement or affidavit in like manner as the original.

§ 14. Limitations on extent of obligation secured. As against purchasers and creditors, the entruster's security interest may extend to any obligation for which the goods, documents or instruments were security before the trust receipt transaction, and to any new value given or agreed to be given as a part of such transaction; but not, otherwise, to secure past indebtedness of the trustee;

nor shall the obligation secured under any trust receipt transaction extend to obligations of the trustee to be subsequently created.

§ 15. Act not applicable to certain transactions. This Act shall not apply to single transactions of legal or equitable pledge, not constituting a course of business, whether such transactions be unaccompanied by delivery of possession, or involved constructive delivery, or delivery and re-delivery, actual or constructive, so far as such transactions involve only an entruster who is an individual natural person, and a trustee entrusted as a fiduciary with handling investments or finances of the entruster; nor shall it apply to transactions of bailment or consignment in which the title of the bailor or consignor is not retained to secure an indebtedness to him of the bailee or consignee.

§ 16. Election among filing statutes. As to any transaction falling within the provisions both of this Act and of any other law requiring filing or recording, the entruster shall not be required to comply with both, but by complying with the provisions of either at his election may have the protection given by the law complied with; except that buyers in the ordinary course of trade as described in subsection two of section nine, and lienors as described in section eleven, shall be protected as therein provided, although the compliance of the entruster be with the filing or recording requirements of another law.

§ 17. Cases not provided for. In any case not provided for in this Act the rules of law and equity, including the law merchant, shall continue to apply to trust receipt transactions and purported pledge transactions not accompanied by delivery of possession.

§ 18. Where under the terms of a trust receipt transaction the trustee has no liberty of sale or other disposition or having liberty of sale or other disposition is to account to the entruster for the proceeds for any disposition of the goods, documents or instruments and where the trustee disposes of the goods, documents or instruments and fails to pay the entruster the amount due under the trust receipt, he shall be deemed guilty of a felony and shall be imprisoned in the penitentiary for not less than one year and not more than ten years in the discretion of the court.

§ 19. Uniformity of interpretation. This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

§ 20. Constitutionalty. If any provisions of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

§ 21. Provisions of Act controlling. Notwithstanding the provisions of any general or special law, the provisions of this Act shall control, *provided, however,* that this Act shall not affect transactions entered into before the effective date of this Act.

§ 22. This Act may be cited as the Uniform Trust Receipts Act.

FILED July 12, 1935.

The Governor having failed to return this bill to the General Assembly during its session, and having failed to file it in my office, with his objections, within ten days after the adjournment of the General Assembly, it has thereby become a law.

Witness my hand this 12th day of July, A. D. 1935.

EDWARD J. HUGHES,
Secretary of State.

COMPILED BY

EDWARD J. HUGHES

Secretary of State.

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UNIFORM TRUST RECEIPTS ACT

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TRUST RECEIPTS AND SECURITY TRANSACTIONS.

§ 1. Definitions.
§ 2. Defining a trust receipt and trust receipt transaction.
§ 3. Pledge or agreement without delivery or possession.
§ 4. Contract to give trust receipt.
§ 5. Validity between parties.
§ 6. Repossession—Default.
§ 7. General effect of entrusters—Filing or taking possession.
§ 8. Validity against creditors.
§ 9. Limitations on entrusters protection against purchasers.
§ 10. Entrusters rights to proceeds.
§ 11. Liens against entrusters.
§ 12. Responsibility of entrusters.
§ 13. Filing and refiling trust receipt transaction—Forms.
§ 14. Limitations.
§ 15. Not applicable to certain transaction.
§ 16. Election among filing statutes.
§ 17. Cases not provided for.
§ 18. Penalty.
§ 19. Uniformity of interpretation.
§ 20. Constitutionality.
§ 21. Provision of Act controlling.
§ 22. Title of Act.

(House Bill No. 982. Filed July 12, 1935.)

An Act *concerning trust receipts and certain security transactions and to make uniform the law relating thereto.*

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. That in this Act, unless the context or subject matter otherwise requires:

(1) "Buyer in the ordinary course of trade" means a person to whom goods are sold and delivered for new value and who acts in good faith and without actual knowledge of any limitation on the trustee's liberty of sale, including one who takes by conditional sale or under a pre-existing mercantile contract with the trustee to buy goods delivered, or like goods, for cash or on credit. "Buyer in the ordinary course of trade" does not include a pledgee, a mortgagee, a lienor, or a transferee in bulk.

(2) "Document" means any document of title to goods.

(3) "Entruster" means the person who has, or directly or by agent takes a security interest in goods, documents or instruments under a trust receipe transaction, and any successor in interest of such person. A person in the business of selling goods or instruments for profit, who at the outset of the transaction has, as against the buyer, general property in such goods or instruments, and who sells the same to the buyer on credit, retaining title or other security interest under a purchase money mortgage or conditional sales contract or otherwise, is excluded.

(4) "Goods" means any chattels personal other than money, choses in action, or things so affixed to land as to become a part thereof.

(5) "Instrument" means:

(a) Any negotiable instrument as defined in the uniform negotiable instruments law and amendments thereto, or

(b) Any certificate of stock, or bond or debenture for the payment of money issued by a public or private corporation as part of a series, or

(c) Any interim, deposit, or participation certificate or receipt, or other credit or investment instrument of a sort marketed in the ordinary course of business of finance, of which the trustee, after the trust receipt transaction, appears by virtue of possession and

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the face of the instrument to be the owner. "Instrument" does not include any document of title to goods.

(6) "Lien creditor" means any creditor who has acquired a specific lien on the goods, documents or instruments by attachment, levy, or by any other similar operation of law or judicial process, including a distraining landlord.

(7) "New value" includes new advances or loans made, and the renewal and extension of such advances or loans, or new obligation incurred, or the release or surrender of a valid and existing security interest, or the release of a claim to proceeds under section ten of this Act.

(8) "Person" means, as the case may be, an individual, trustee, receiver or other fiduciary, partnership, corporation, business trust, or other association, and two or more persons having a joint or common interest.

(9) "Possession," as used in this Act with reference to possession taken or retained by the entruster, means actual possession of goods, documents or instruments, or, in the case of goods, such constructive possession as, by means of tags or signs or other outward marks placed and remaining in conspicuous places, may reasonably be expected in fact to indicate to the third party in question that the entruster has control over or interest in the goods.

(10) "Purchase" means taking by sale, conditional sale, lease, mortgage, or pledge, legal or equitable.

(11) "Purchaser" means any person taking by purchase. A pledgee, mortgagee or other claimant of a security interest created by contract is, in so far as concerns his specific security, a purchaser and not a creditor.

(12) "Security interest" means a property interest in goods, documents or instruments, limited in extent to securing performance of some obligation of the trustee or of some third person to the entruster, and includes the interest of a pledgee, and title, whether or not expressed to be absolute, whenever such title is in substance taken or retained for security only.

(13) "Transferee in bulk" means a mortgage or a pledgee or a buyer of the trustee's business substantially as a whole.

(14) "Trustee" means the person having or taking possession of goods, documents or instruments under a trust receipt transaction, and any successor in interest of such person. The use of the word "trustee" herein shall not be interpreted or construed to imply the existence of a trust or any right or duty of a trustee in the sense of equity jurisprudence other than as provided by this Act.

(15) "Value" means any consideration sufficient to support a simple contract. Any antecedent or pre-existing claim, whether for money or not, and whether against the transferror or against another person, constitutes value where goods, documents or instruments are taken either in satisfaction thereof or as security therefor.

§ 2. What constitutes trust receipt transaction and trust receipt.

(1) A trust receipt transaction within the meaning of this Act is any transaction to which an entruster and a trustee are parties for one of the purposes set forth in subsection three of this section, whereby

(a) The entruster or any third person delivers to the trustee goods, documents or instruments in which the entruster prior to transaction has, or for new value by the transaction acquires or as a result thereof is to acquire promptly, a security interest; or

(b) The entruster gives new value in reliance upon the transfer by the trustee to such entruster of a security interest in instruments or documents which are actually exhibited to such entruster, or to his agent in that behalf, at a place of business of either entruster or agent, but possession of which is retained by the trustee; or (c) the entruster gives new value in reliance upon the transfer by the trustee to such entruster of a security interest in goods or documents in possession of the trustee and the possession of which is retained by the trustee; *provided,* that the delivery under paragraph (a) or the giving of new value under paragraph (b) or (c) either

(I) Be against the signing and delivery by the trustee of a writing designating the goods, documents or instruments concerned, and reciting that a security interest therein remains or will remain, or has passed to or will pass to, the entruster, or

(II) Be pursuant to a prior or concurrent written and signed agreement of the trustee to give such a writing.

The security interest of the entruster may be derived from the trustee or from any other person, and by pledge or by transfer of title or otherwise.

If the trustee's right in the goods, documents or instruments are subject to a prior trust receipt transaction, or to a prior equitable pledge, section nine and section three, respectively, of this Act, determine the priorities.

(2) A writing such as is described in subsection one, paragraph (I), of this section signed by the trustee, and given in or pursuant to such a transaction, is designated in this Act as a "trust receipt". No further formality of execution or authentication shall be necessary to the validity of a trust receipt.

(3) A transaction shall not be deemed a trust receipt transaction unless the possession of the trustee thereunder is for a purpose substantially equivalent to any one of the following:

(a) In the case of goods, documents or instruments, for the purpose of selling or exchanging them, or of procuring their sale or exchange; or

(b) In the case of goods or documents, for the purpose of manufacturing or processing the goods delivered or covered by the documents, with the purpose of ultimate sale, or for the purpose of loading, unloading, storing, shipping, transhipping or otherwise dealing with them in a manner preliminary to or necessary to their sale; or

(c) In the case of instruments, for the purpose of delivering them to a principal, under whom the trustee is holding them, or for the consummation of some transaction involving delivery to a depository or registrar, or for their presentation, collection, or renewal.

§ 3. Attempted creation or continuance of pledge without delivery or retention of possession.

(1) An attempted pledge or agreement to pledge not accompanied by delivery of possession, which does not fulfill the requirements of a trust receipt transaction, shall be valid as against creditors of the pledgor only as follows:

(a) To the extent that new value is given by the pledgee in reliance thereon, such pledge or agreement to pledge shall be valid as against all creditors with or without notice, for ten days from the time the new value is given;

(b) To the extent that the value given by the pledgee is not new value, and in the case of new value after the lapse of ten days from the giving thereof, the pledge shall have validity as against lien creditors without notice, who become such as prescribed in section eight, only as of the time the pledgee takes possession, and without relation back.

(2) Purchasers (including entrusters) for value and without notice of the pledgee's interest shall take free of any such pledge or agreement to pledge unless, prior to the purchase, it has been perfected by possession taken.

(3) Where, under circumstances not constituting a trust receipt transaction, a person for a temporary and limited purpose, delivers goods, documents or instruments, in which he holds a pledgee's or other security interest, to the person holding beneficial interest therein, the transaction has like effect with a purported pledge for a new value under this section.

§ 4. Contract to give trust receipt.

(1) A contract to give a trust receipt, if in writing and signed by the trustee, shall, with reference to the goods, documents or instruments thereafter delivered by the entruster to the trustee in reliance on such contract and with reference to goods, documents and instruments in trustee's possession for a security interest in which entruster thereafter gives new value to trustee, be equivalent in all respects to a trust receipt.

(2) Such a contract shall as to such goods, documents, or instruments be specifically enforceable against the trustee; but this subsection shall not enlarge the scope of the entruster's rights against creditors of the trustee as limited by this Act.

§ 5. Validity between the parties. Between the entruster and the trustee the terms of the trust receipt shall, save as otherwise provided by this Act, be valid and enforceable. But no provision for forfeiture of the trustee's interest shall be valid except as provided in subsection five of section 6.

§ 6. Repossession, and the entruster's rights on default.

(1) The entruster shall be entitled as against the trustee to possession of the goods, documents or instruments on default and as may be otherwise specified in the trust receipt.

(2) An entruster entitled to possession under the term of the trust receipt or of subsection one of this section may take such possession without legal process, whenever that is possible without breach of the peace.

(3) (a) After possession taken, the entruster shall subject to paragraph (b) of this subsection and to subsection five, hold such goods, documents or instruments with the rights and duties of the pledgee.

(b) An entruster in possession may, on or after default, give notice to the trustee of intention to sell, and may, not less than five days after the serving or sending of such notice, sell the goods, documents or instruments for the trustee's account at public or private sale, and may at a public sale himself become a purchaser. The proceeds of any such sale, whether public or private shall be applied (I) to the payment of the expense thereof, (II) to the payment of the expenses of retaking, keeping and storing the goods, documents, or instruments, (III) to the satisfaction of the trustee's indebtedness. The trustee shall receive any surplus and shall be liable to the entruster for any deficiency. Notice of sale shall be deemed sufficiently given if in writing, and either (I) personally served on the trustee, or (II) sent by post-paid ordinary mail to the trustee's last known business address.

(c) A purchaser in good faith and for value from an entruster in possession takes free of the trustee's interest, even in a case in which the entruster is liable to the trustee for conversion.

(4) Surrender of the trustee's interest to the entruster shall be valid, on any terms upon which the trustee and the entruster may, after default, agree.

(5) As to articles manufactured by style or model, the terms of the trust receipt may provide for forfeiture of the trustee's interest, at the election of the entruster, and as an alternative to the remedies hereinbefore provided, in the event of the trustee's default, against cancellation of the trustee's then remaining indebtedness; *provided,* that in case of the original maturity of such an indebtedness there must be cancelled not less than 80% of the original indebtedness; or in case of a first renewal, not less than 70%, or in case of a second or further renewal not less than 60%.

§ 7. General effect of entruster's filing or taking possession.

(1) (a) If the entruster within the period of thirty days specified in subsection one of section eight files as in this Act provided, such filing shall be effective to preserve his security interest in documents for goods against all persons, save as otherwise provided.

(b) Filing after the lapse of the said period shall be valid; but in such event, save as provided in paragraph (b) of subsection two of section nine, the entruster's security interest shall be deemed to

be created by the trustee as of the time of such filing, without relation back, as against all persons not having notice of such interest.

(2) The taking of possession by the entruster shall, so long as such possession in retained, have the effect of filing, in the case of goods or documents; and of notice of the entruster's security interest to all persons in the case of instruments.

§ 8. Validity against creditors. (1) The entruster's security interest in goods, documents or instruments under the written terms of a trust receipt transaction, shall without any filing be valid as against all creditors of the trustee, with or without notice, for thirty days after delivery of the goods, documents or instruments to the trustee, and thereafter except as in this Act otherwise provided. But where the trustee at the time of the trust receipt transaction has and retains goods, documents or instruments, the thirty days shall be reckoned, in the case of goods or documents from the time the entruster gives new value under the transaction and in the case of instruments from the time such instruments are actually shown to the entruster or from the time that the entruster gives new value, whichever is prior.

(2) Save as provided in subsection one of this section, the entruster's security interest shall be void as against lien creditors who become such after such thirty day period and without notice of such interest and before filing.

(3) Unless prior to the acquisition of notice by all creditors filing has occurred or possession has been taken by the entruster, (I) an assignee for the benefit of creditors, from the time of assignment, or (II) a receiver in equity from the time of his appointment, or (III) a trustee in bankruptcy or in judicial insolvency proceedings from the time of filing of the petition in bankruptcy or judicial insolvency by or against the trustee shall, on behalf of all creditors, stand in the position of a lien creditor without notice, without reference to whether he personally has or has not, in fact, notice of the entruster's interest.

§9. Limitations on entruster's protection against purchasers.

(1) Purchasers of negotiable documents or instruments.

(a) Nothing in this Act shall limit the rights of purchasers in good faith and for value from the trustee of negotiable instruments or negotiable documents, and purchasers taking from the trustee for value, in good faith, and by transfer in the customary manner, instruments, in such forms as are by common practice purchased and sold as if negotiable; and they shall hold such instruments free of the entruster's interest; and filing under this Act shall not be deemed to constitute notice of the entruster's interest to purchasers in good faith and for value of such documents or instruments, other than transferees in bulk.

(b) The entrusting (directly, by agent, or through the intervention of a third person) of goods, documents, or instruments by an entruster to a trustee, under a trust receipt transaction or a

transaction falling within section three of this Act, shall be equivalent to the like entrusting of any documents or instruments which the trustee may procure in substitution, or which represent the same goods or instruments or the proceeds thereof, and which the trustee negotiates to a purchaser in good faith and for value.

(2) Where a purchaser from the trustee is not protected under subsection one hereof, the following rules shall govern:

(a) Sales by trustee in the ordinary course of trade.

(I) Where the trustee, under the trust receipt transaction, has liberty of sale and sells to a buyer in the ordinary course of trade, whether before or after the expiration of the thirty day period specified in subsection one of section eight of this Act, and whether or not filing has taken place, such buyer takes free of the entruster's security interest in the goods so sold, and no filing shall constitute notice of the entruster's security interest to such a buyer.

(II) No limitation placed by the entruster on the liberty of sale granted to the trustee shall affect a buyer in the ordinary course of trade, unless the limitation is actually known to the latter.

(b) Purchasers other than buyers in the ordinary course of trade. In the absence of filing, the entruster's security interest in goods shall be valid, as against purchasers, save as provided in this section; but any purchaser, not a buyer in the ordinary course of trade, who, in good faith and without notice of the entruster's security interest and before filing, either (I) gives new value before the expiration of the thirty day period specified in subsection one of section eight, or (II) gives value after said period, and who in either event before filing also obtains delivery of goods from a trustee shall hold the subject matter of his purchase free of the entruster's security interest; but a transferee in bulk can take only under (II) of this paragraph (b).

(c) Liberty of Sale. If the entruster consents to the placing of goods subject to a trust receipt transaction in the trustee's stock in trade or in his sale or exhibition rooms, or allows such goods to be so placed or kept, such consent or allowance shall have like effect as granting the trustee liberty of sale.

(3) As to all cases covered by this section the purchase of goods, documents or instruments on credit shall constitute a purchase for new value, but the entruster shall be entitled to any debt owing to the trustee and any security therefor, by reason of such purchase; except that the entruster's right shall be subject to any set-off or defense valid against the trustee and accruing before the purchaser has actual notice of the entruster's interest.

§ 10. Entruster's rights to proceeds. Where, under the terms of the trust receipt transaction, the trustee has no liberty of sale or other disposition, or, having liberty of sale or other disposition, is to account to the entruster for the proceeds of any disposition of the goods, documents or instruments, the entruster shall be entitled,

to the extent to which and as against all classes of persons as to whom his security interest was valid at the time of disposition by the trustee, as follows:

(a) To the debts described in subsection three of section nine hereof; and also

(b) To any proceeds or the value of any proceeds (whether such proceeds are identifiable or not) of the goods, documents or instruments, if said proceeds were received by the trustee within ten days prior to either application for appointment of a receiver of the trustee, or the filing of a petition in bankruptcy or judicial insolvency proceedings by or against the trustee, or demand made by the entruster for prompt accounting; and to a priority to the amount of such proceeds or value; and also

(c) To any other proceeds of the goods, documents or instruments which are identifiable.

§ 11. Liens in course of business good against entruster. Specific liens arising out of contractual acts of the trustee with reference to the processing, warehousing, shipping or otherwise dealing with specific goods in the usual course of the trustee's business preparatory to their sale shall attach against the interest of the entruster in said goods as well as against the interest of the trustee, whether or not filing has occurred under this Act; but this section shall not obligate the entruster personally for any debt secured by such lien; nor shall it be construed to include the lien of a landlord.

§ 12. Entruster not responsible on sale by trustee. An entruster holding a security interest shall not, merely by virtue of such interest or of his having given the trustee liberty of sale or other disposition, be responsible as principal or as vendor under any sale or contract to sell made by the trustee.

§ 13. Filing and refiling concerning trust receipt transactions covering documents or goods. (1) Any entruster undertaking or contemplating trust receipt transactions with reference to documents or goods is entitled to file with the Secretary of State a statement, signed by the entruster and the trustee, containing:

(a) A designation of the entruster and the trustee, and of the chief place of business of each within this State, if any; and if the entruster has no place of business within the State, a designation of his chief place of business outside the State; and

(b) A statement that the entruster is engaged, or expects to be engaged, in financing under trust receipt transactions the acquisition of goods by the trustee; and

(c) A description of the kind or kinds of goods covered or to be covered by such financing.

(2) The following form of statement (or any other form of statement containing substantially the same information) shall suffice for the purposes of this Act:

"Statement of Trust Receipt Financing"

"The entruster,.....whose chief place of business within this State is at....., (or who has no place of business within this State and whose chief place of business outside this State is at.....), is or expects to be engaged in financing under trust receipt transactions the acquisition by the trustee,.....whose chief place of business within this State is at.....of goods of the following description; (coffee, silk, automobiles, or the like).

(Signed).....Entruster

(Signed).....Trustee."

(3) It shall be the duty of the filing officer to mark each statement filed with a consecutive file number, and with the date and hour of filing, and to keep such statement in a separate file; and to note and index the filing in a suitable index, indexed according to the name of the trustee and containing a notation of the trustee's chief place of business as given in the statement. The fee for such filing shall be one dollar.

(4) Presentation for filing of the statement described in subsection one, and payment of the filing fee, shall constitute filing under this Act in favor of the entruster, as to any document or goods falling within the description in the statement which are within one year from the date of such filing, or have been, within thirty days previous to such filing, the subject-matter of a trust receipt transaction between the entruster and the trustee.

(5) At any time before expiration of the validity of the filing, as specified in subsection four, a like statement, or an affidavit by the entruster alone, setting out the information required by subsection one, may be filed in like manner as the original filing. Any filing of such further statement or affidavit shall be valid in like manner and for like period as an original filing, and shall also continue the rank of the entruster's existing security interest as against all junior interests. It shall be the duty of the filing officer to mark, file and index the further statement or affidavit in like manner as the original.

§ 14. Limitations on extent of obligation secured. As against purchasers and creditors, the entruster's security interest may extend to any obligation for which the goods, documents or instruments were security before the trust receipt transaction, and to any new value given or agreed to be given as a part of such transaction; but not, otherwise, to secure past indebtedness of the trustee;

nor shall the obligation secured under any trust receipt transaction extend to obligations of the trustee to be subsequently created.

§ 15. Act not applicable to certain transactions. This Act shall not apply to single transactions of legal or equitable pledge, not constituting a course of business, whether such transactions be unaccompanied by delivery of possession, or involved constructive delivery, or delivery and re-delivery, actual or constructive, so far as such transactions involve only an entruster who is an individual natural person, and a trustee entrusted as a fiduciary with handling investments or finances of the entruster; nor shall it apply to transactions of bailment or consignment in which the title of the bailor or consignor is not retained to secure an indebtedness to him of the bailee or consignee.

§ 16. Election among filing statutes. As to any transaction falling within the provisions both of this Act and of any other law requiring filing or recording, the entruster shall not be required to comply with both, but by complying with the provisions of either at his election may have the protection given by the law complied with; except that buyers in the ordinary course of trade as described in subsection two of section nine, and lienors as described in section eleven, shall be protected as therein provided, although the compliance of the entruster be with the filing or recording requirements of another law.

§ 17. Cases not provided for. In any case not provided for in this Act the rules of law and equity, including the law merchant, shall continue to apply to trust receipt transactions and purported pledge transactions not accompanied by delivery of possession.

§ 18. Where under the terms of a trust receipt transaction the trustee has no liberty of sale or other disposition or having liberty of sale or other disposition is to account to the entruster for the proceeds for any disposition of the goods, documents or instruments and where the trustee disposes of the goods, documents or instruments and fails to pay the entruster the amount due under the trust receipt, he shall be deemed guilty of a felony and shall be imprisoned in the penitentiary for not less than one year and not more than ten years in the discretion of the court.

§ 19. Uniformity of interpretation. This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

§ 20. Constitutionalty. If any provisions of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

§ 21. Provisions of Act controlling. Notwithstanding the provisions of any general or special law, the provisions of this Act shall control, *provided, however,* that this Act shall not affect transactions entered into before the effective date of this Act.

§ 22. This Act may be cited as the Uniform Trust Receipts Act.

FILED July 12, 1935.

The Governor having failed to return this bill to the General Assembly during its session, and having failed to file it in my office, with his objections, within ten days after the adjournment of the General Assembly, it has thereby become a law.

Witness my hand this 12th day of July, A. D. 1935.

EDWARD J. HUGHES,
Secretary of State.

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The Uniform Trust Receipts Act

As Amended and in Force July 1, 1953

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TRUST RECEIPTS AND SECURITY TRANSACTIONS.

§ 1. Definitions.
§ 2. Defining a trust receipt and trust receipt transaction.
§ 3. Pledge or agreement without delivery or possession.
§ 4. Contract to give trust receipt.
§ 5. Validity between parties.
§ 6. Repossession—Default.
§ 7. General effect of entrusters—Filing or taking possession.
§ 8. Validity against creditors.
§ 9. Limitations on entrusters protection against purchasers.
§ 10. Entrusters rights to proceeds.
§ 11. Liens against entrusters.
§ 12. Responsibility of entrusters.
§ 13. Filing and refiling trust receipt transaction—Forms.
§ 14. Limitations.
§ 15. Not applicable to certain transaction.
§ 16. Election among filing statutes.
§ 17. Cases not provided for.
§ 18. (Repealed.)
§ 18.01 Penalty.
§ 19. Uniformity of interpretation.
§ 20. Constitutionality.
§ 21. Provision of Act controlling.
§ 22. Title of Act.

(House Bill No. 982. Filed July 12, 1935.)

An Act *concerning trust receipts and certain security transactions, to make uniform the law relating thereto, and to provide penalties for the violation thereof.* (Filed July 12, 1935, title as amended by an Act approved June 16, 1953.)

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. That in this Act, unless the context or subject matter otherwise requires:

(1) "Buyer in the ordinary course of trade" means a person to whom goods are sold and delivered for new value and who acts in good faith and without actual knowledge of any limitation on the trustee's liberty of sale, including one who takes by conditional sale or under a pre-existing mercantile contract with the trustee to buy goods delivered, or like goods, for cash or on credit. "Buyer in the ordinary course of trade" does not include a pledgee, a mortgagee, a lienor, or a transferee in bulk.

(2) "Document" means any document of title to goods.

(3) "Entruster" means the person who has, or directly or by agent takes a security interest in goods, documents or instruments under a trust receipt transaction, and any successor in interest of such person. A person in the business of selling goods or instruments for profit, who at the outset of the transaction has, as against the buyer, general property in such goods or instruments, and who sells the same to the buyer on credit, retaining title or other security interest under a purchase money mortgage or conditional sales contract or otherwise, is excluded.

(4) "Goods" means any chattels personal other than money, choses in action, or things so affixed to land as to become a part thereof.

(5) "Instrument" means:

(a) Any negotiable instrument as defined in the uniform negotiable instruments law and amendments thereto, or

(b) Any certificate of stock, or bond or debenture for the payment of money issued by a public or private corporation as part of a series, or

(c) Any interim, deposit, or participation certificate or receipt, or other credit or investment instrument of a sort marketed in the ordinary course of business of finance, of which the trustee, after the trust receipt transaction, appears by virtue of possession and

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the face of the instrument to be the owner. "Instrument" does not include any document of title to goods.

(6) "Lien creditor" means any creditor who has acquired a specific lien on the goods, documents or instruments by attachment, levy, or by any other similar operation of law or judicial process, including a distraining landlord.

(7) "New value" includes new advances or loans made, and the renewal and extension of such advances or loans, or new obligation incurred, or the release or surrender of a valid and existing security interest, or the release of a claim to proceeds under section ten of this Act.

(8) "Person" means, as the case may be, an individual, trustee, receiver or other fiduciary, partnership, corporation, business trust, or other association, and two or more persons having a joint or common interest.

(9) "Possession," as used in this Act with reference to possession taken or retained by the entruster, means actual possession of goods, documents or instruments, or, in the case of goods, such constructive possession as, by means of tags or signs or other outward marks placed and remaining in conspicuous places, may reasonably be expected in fact to indicate to the third party in question that the entruster has control over or interest in the goods.

(10) "Purchase" means taking by sale, conditional sale, lease, mortgage, or pledge, legal or equitable.

(11) "Purchaser" means any person taking by purchase. A pledgee, mortgagee or other claimant of a security interest created by contract is, in so far as concerns his specific security, a purchaser and not a creditor.

(12) "Security interest" means a property interest in goods, documents or instruments, limited in extent to securing performance of some obligation of the trustee or of some third person to the entruster, and includes the interest of a pledgee, and title, whether or not expressed to be absolute, whenever such title is in substance taken or retained for security only.

(13) "Transferee in bulk" means a mortgagee or a pledgee or a buyer of the trustee's business substantially as a whole.

(14) "Trustee" means the person having or taking possession of goods, documents or instruments under a trust receipt transaction, and any successor in interest of such person. The use of the word "trustee" herein shall not be interpreted or construed to imply the existence of a trust or any right or duty of a trustee in the sense of equity jurisprudence other than as provided by this Act.

(15) "Value" means any consideration sufficient to support a simple contract. Any antecedent or pre-existing claim, whether for money or not, and whether against the transferror or against another person, constitutes value where goods, documents or instruments are taken either in satisfaction thereof or as security therefor.

§ 2. What constitutes trust receipt transaction and trust receipt.

(1) A trust receipt transaction within the meaning of this Act is any transaction to which an entruster and a trustee are parties for one of the purposes set forth in subsection three of this section, whereby

(a) The entruster or any third person delivers to the trustee goods, documents or instruments in which the entruster prior to transaction has, or for new value by the transaction acquires or as a result thereof is to acquire promptly, a security interest; or

(b) The entruster gives new value in reliance upon the transfer by the trustee to such entruster of a security interest in instruments or documents which are actually exhibited to such entruster, or to his agent in that behalf, at a place of business of either entruster or agent, but possession of which is retained by the trustee; or (c) the entruster gives new value in reliance upon the transfer by the trustee to such entruster of a security interest in goods or documents in possession of the trustee and the possession of which is retained by the trustee; *provided,* that the delivery under paragraph (a) or the giving of new value under paragraph (b) or (c) either

(I) Be against the signing and delivery by the trustee of a writing designating the goods, documents or instruments concerned, and reciting that a security interest therein remains or will remain, or has passed to or will pass to, the entruster, or

(II) Be pursuant to a prior or concurrent written and signed agreement of the trustee to give such a writing.

The security interest of the entruster may be derived from the trustee or from any other person, and by pledge or by transfer of title or otherwise.

If the trustee's right in the goods, documents or instruments are subject to a prior trust receipt transaction, or to a prior equitable pledge, section nine and section three, respectively, of this Act, determine the priorities.

(2) A writing such as is described in subsection one, paragraph (I), of this section signed by the trustee, and given in or pursuant to such a transaction, is designated in this Act as a "trust receipt". No further formality of execution or authentication shall be necessary to the validity of a trust receipt.

(3) A transaction shall not be deemed a trust receipt transaction unless the possession of the trustee thereunder is for a purpose substantially equivalent to any one of the following:

(a) In the case of goods, documents or instruments, for the purpose of selling or exchanging them, or of procuring their sale or exchange; or

(b) In the case of goods or documents, for the purpose of manufacturing or processing the goods delivered or covered by the documents, with the purpose of ultimate sale, or for the purpose of loading, unloading, storing, shipping, transhipping or otherwise dealing with them in a manner preliminary to or necessary to their sale; or

(c) In the case of instruments, for the purpose of delivering them to a principal, under whom the trustee is holding them, or for the consummation of some transaction involving delivery to a depository or registrar, or for their presentation, collection, or renewal.

§ 3. Attempted creation or continuance of pledge without delivery or retention of possession.

(1) An attempted pledge or agreement to pledge not accompanied by delivery of possession, which does not fulfill the requirements of a trust receipt transaction, shall be valid as against creditors of the pledgor only as follows:

(a) To the extent that new value is given by the pledgee in reliance thereon, such pledge or agreement to pledge shall be valid as against all creditors with or without notice, for ten days from the time the new value is given;

(b) To the extent that the value given by the pledgee is not new value, and in the case of new value after the lapse of ten days from the giving thereof, the pledge shall have validity as against lien creditors without notice, who become such as prescribed in section eight, only as of the time the pledgee takes possession, and without relation back.

(2) Purchasers (including entrusters) for value and without notice of the pledgee's interest shall take free of any such pledge or agreement to pledge unless, prior to the purchase, it has been perfected by possession taken.

(3) Where, under circumstances not constituting a trust receipt transaction, a person for a temporary and limited purpose, delivers goods, documents or instruments, in which he holds a pledgee's or other security interest, to the person holding beneficial interest therein, the transaction has like effect with a purported pledge for a new value under this section.

§ 4. Contract to give trust receipt.

(1) A contract to give a trust receipt, if in writing and signed by the trustee, shall, with reference to the goods, documents or instruments thereafter delivered by the entruster to the trustee in reliance on such contract and with reference to goods, documents and instruments in trustee's possession for a security interest in which entruster thereafter gives new value to trustee, be equivalent in all respects to a trust receipt.

(2) Such a contract shall as to such goods, documents, or instruments be specifically enforceable against the trustee; but this subsection shall not enlarge the scope of the entruster's rights against creditors of the trustee as limited by this Act.

§ 5. Validity between the parties. Between the entruster and the trustee the terms of the trust receipt shall, save as otherwise provided by this Act, be valid and enforceable. But no provision for forfeiture of the trustee's interest shall be valid except as provided in subsection five of section 6.

§ 6. Repossession, and the entruster's rights on default.

(1) The entruster shall be entitled as against the trustee to possession of the goods, documents or instruments on default and as may be otherwise specified in the trust receipt.

(2) An entruster entitled to possession under the term of the trust receipt or of subsection one of this section may take such possession without legal process, whenever that is possible without breach of the peace.

(3) (a) After possession taken, the entruster shall subject to paragraph (b) of this subsection and to subsection five, hold such goods, documents or instruments with the rights and duties of the pledgee.

(b) An entruster in possession may, on or after default, give notice to the trustee of intention to sell, and may, not less than five days after the serving or sending of such notice, sell the goods, documents or instruments for the trustee's account at public or private sale, and may at a public sale himself become a purchaser. The proceeds of any such sale, whether public or private shall be applied (I) to the payment of the expense thereof, (II) to the payment of the expenses of retaking, keeping and storing the goods, documents, or instruments, (III) to the satisfaction of the trustee's indebtedness. The trustee shall receive any surplus and shall be liable to the entruster for any deficiency. Notice of sale shall be deemed sufficiently given if in writing, and either (I) personally served on the trustee, or (II) sent by post-paid ordinary mail to the trustee's last known business address.

(c) A purchaser in good faith and for value from an entruster in possession takes free of the trustee's interest, even in a case in which the entruster is liable to the trustee for conversion.

(4) Surrender of the trustee's interest to the entruster shall be valid, on any terms upon which the trustee and the entruster may, after default, agree.

(5) As to articles manufactured by style or model, the terms of the trust receipt may provide for forfeiture of the trustee's interest, at the election of the entruster, and as an alternative to the remedies hereinbefore provided, in the event of the trustee's default, against cancellation of the trustee's then remaining indebtedness; *provided,* that in case of the original maturity of such an indebtedness there must be cancelled not less than 80% of the original indebtedness; or in case of a first renewal, not less than 70%, or in case of a second or further renewal not less than 60%.

§ 7. General effect of entruster's filing or taking possession.

(1) (a) If the entruster within the period of thirty days specified in subsection one of section eight files as in this Act provided, such filing shall be effective to preserve his security interest in documents for goods against all persons, save as otherwise provided.

(b) Filing after the lapse of the said period shall be valid; but in such event, save as provided in paragraph (b) of subsection two of section nine, the entruster's security interest shall be deemed to

be created by the trustee as of the time of such filing, without relation back, as against all persons not having notice of such interest.

(2) The taking of possession by the entruster shall, so long as such possession is retained, have the effect of filing, in the case of goods or documents; and of notice of the entruster's security interest to all persons in the case of instruments.

§ 8. Validity against creditors. (1) The entruster's security interest in goods, documents or instruments under the written terms of a trust receipt transaction, shall without any filing be valid as against all creditors of the trustee, with or without notice, for thirty days after delivery of the goods, documents or instruments to the trustee, and thereafter except as in this Act otherwise provided. But where the trustee at the time of the trust receipt transaction has and retains goods, documents or instruments, the thirty days shall be reckoned, in the case of goods or documents from the time the entruster gives new value under the transaction and in the case of instruments from the time such instruments are actually shown to the entruster or from the time that the entruster gives new value, whichever is prior.

(2) Save as provided in subsection one of this section, the entruster's security interest shall be void as against lien creditors who become such after such thirty day period and without notice of such interest and before filing.

(3) Unless prior to the acquisition of notice by all creditors filing has occurred or possession has been taken by the entruster, (I) an assignee for the benefit of creditors, from the time of assignment, or (II) a receiver in equity from the time of his appointment, or (III) a trustee in bankruptcy or in judicial insolvency proceedings from the time of filing of the petition in bankruptcy or judicial insolvency by or against the trustee shall, on behalf of all creditors, stand in the position of a lien creditor without notice, without reference to whether he personally has or has not, in fact, notice of the entruster's interest.

§9. Limitations on entruster's protection against purchasers.

(1) Purchasers of negotiable documents or instruments.

(a) Nothing in this Act shall limit the rights of purchasers in good faith and for value from the trustee of negotiable instruments or negotiable documents, and purchasers taking from the trustee for value, in good faith, and by transfer in the customary manner, instruments, in such forms as are by common practice purchased and sold as if negotiable; and they shall hold such instruments free of the entruster's interest; and filing under this Act shall not be deemed to constitute notice of the entruster's interest to purchasers in good faith and for value of such documents or instruments, other than transferees in bulk.

(b) The entrusting (directly, by agent, or through the intervention of a third person) of goods, documents, or instruments by an entruster to a trustee, under a trust receipt transaction or a

transaction falling within section three of this Act, shall be equivalent to the like entrusting of any documents or instruments which the trustee may procure in substitution, or which represent the same goods or instruments or the proceeds thereof, and which the trustee negotiates to a purchaser in good faith and for value.

(2) Where a purchaser from the trustee is not protected under subsection one hereof, the following rules shall govern:

(a) Sales by trustee in the ordinary course of trade.

(I) Where the trustee, under the trust receipt transaction, has liberty of sale and sells to a buyer in the ordinary course of trade, whether before or after the expiration of the thirty day period specified in subsection one of section eight of this Act, and whether or not filing has taken place, such buyer takes free of the entruster's security interest in the goods so sold, and no filing shall constitute notice of the entruster's security interest to such a buyer.

(II) No limitation placed by the entruster on the liberty of sale granted to the trustee shall affect a buyer in the ordinary course of trade, unless the limitation is actually known to the latter.

(b) Purchasers other than buyers in the ordinary course of trade. In the absence of filing, the entruster's security interest in goods shall be valid, as against purchasers, save as provided in this section; but any purchaser, not a buyer in the ordinary course of trade, who, in good faith and without notice of the entruster's security interest and before filing, either (I) gives new value before the expiration of the thirty day period specified in subsection one of section eight, or (II) gives value after said period, and who in either event before filing also obtains delivery of goods from a trustee shall hold the subject matter of his purchase free of the entruster's security interest; but a transferee in bulk can take only under (II) of this paragraph (b).

(c) Liberty of Sale. If the entruster consents to the placing of goods subject to a trust receipt transaction in the trustee's stock in trade or in his sale or exhibition rooms, or allows such goods to be so placed or kept, such consent or allowance shall have like effect as granting the trustee liberty of sale.

(3) As to all cases covered by this section the purchase of goods, documents or instruments on credit shall constitute a purchase for new value, but the entruster shall be entitled to any debt owing to the trustee and any security therefor, by reason of such purchase; except that the entruster's right shall be subject to any set-off or defense valid against the trustee and accruing before the purchaser has actual notice of the entruster's interest.

§ 10. Entruster's rights to proceeds. Where, under the terms of the trust receipt transaction, the trustee has no liberty of sale or other disposition, or, having liberty of sale or other disposition, is to account to the entruster for the proceeds of any disposition of the goods, documents or instruments, the entruster shall be entitled,

to the extent to which and as against all classes of persons as to whom his security interest was valid at the time of disposition by the trustee, as follows:

(a) To the debts described in subsection three of section nine hereof; and also

(b) To any proceeds or the value of any proceeds (whether such proceeds are identifiable or not) of the goods, documents or instruments, if said proceeds were received by the trustee within ten days prior to either application for appointment of a receiver of the trustee, or the filing of a petition in bankruptcy or judicial insolvency proceedings by or against the trustee, or demand made by the entruster for prompt accounting; and to a priority to the amount of such proceeds or value; and also

(c) To any other proceeds of the goods, documents or instruments which are identifiable.

§ 11. Liens in course of business good against entruster. Specific liens arising out of contractual acts of the trustee with reference to the processing, warehousing, shipping or otherwise dealing with specific goods in the usual course of the trustee's business preparatory to their sale shall attach against the interest of the entruster in said goods as well as against the interest of the trustee, whether or not filing has occurred under this Act; but this section shall not obligate the entruster personally for any debt secured by such lien; nor shall it be construed to include the lien of a landlord.

§ 12. Entruster not responsible on sale by trustee. An entruster holding a security interest shall not, merely by virtue of such interest or of his having given the trustee liberty of sale or other disposition, be responsible as principal or as vendor under any sale or contract to sell made by the trustee.

§ 13. Filing and refiling concerning trust receipt transactions covering documents or goods. (1) Any entruster undertaking or contemplating trust receipt transactions with reference to documents or goods is entitled to file with the Secretary of State a statement, signed by the entruster and the trustee, containing:

(a) A designation of the entruster and the trustee, and of the chief place of business of each within this State, if any; and if the entruster has no place of business within the State, a designation of his chief place of business outside the State; and

(b) A statement that the entruster is engaged, or expects to be engaged, in financing under trust receipt transactions the acquisition of goods by the trustee; and

(c) A description of the kind or kinds of goods covered or to be covered by such financing.

(2) The following form of statement (or any other form of statement containing substantially the same information) shall suffice for the purposes of this Act:

"Statement of Trust Receipt Financing"

"The entruster,.....whose chief place of business within this State is at....., (or who has no place of business within this State and whose chief place of business outside this State is at.....), is or expects to be engaged in financing under trust receipt transactions the acquisition by the trustee,.....whose chief place of business within this State is at.....of goods of the following description; (coffee, silk, automobiles, or the like).

(Signed).....Entruster

(Signed).....Trustee."

(3) It shall be the duty of the filing officer to mark each statement filed with a consecutive file number, and with the date and hour of filing, and to keep such statement in a separate file; and to note and index the filing in a suitable index, indexed according to the name of the trustee and containing a notation of the trustee's chief place of business as given in the statement. The fee for such filing shall be one dollar.

(4) Presentation for filing of the statement described in subsection one, and payment of the filing fee, shall constitute filing under this Act in favor of the entruster, as to any document or goods falling within the description in the statement which are within one year from the date of such filing, or have been, within thirty days previous to such filing, the subject-matter of a trust receipt transaction between the entruster and the trustee.

(5) At any time before expiration of the validity of the filing, as specified in subsection four, a like statement, or an affidavit by the entruster alone, setting out the information required by subsection one, may be filed in like manner as the original filing. Any filing of such further statement or affidavit shall be valid in like manner and for like period as an original filing, and shall also continue the rank of the entruster's existing security interest as against all junior interests. It shall be the duty of the filing officer to mark, file and index the further statement or affidavit in like manner as the original.

§ 14. Limitations on extent of obligation secured. As against purchasers and creditors, the entruster's security interest may extend to any obligation for which the goods, documents or instruments were security before the trust receipt transaction, and to any new value given or agreed to be given as a part of such transaction; but not, otherwise, to secure past indebtedness of the trustee;

nor shall the obligation secured under any trust receipt transaction extend to obligations of the trustee to be subsequently created.

§ 15. Act not applicable to certain transactions. This Act shall not apply to single transactions of legal or equitable pledge, not constituting a course of business, whether such transactions be unaccompanied by delivery of possession, or involved constructive delivery, or delivery and re-delivery, actual or constructive, so far as such transactions involve only an entruster who is an individual natural person, and a trustee entrusted as a fiduciary with handling investments or finances of the entruster; nor shall it apply to transactions of bailment or consignment in which the title of the bailor or consignor is not retained to secure an indebtedness to him of the bailee or consignee.

§ 16. Election among filing statutes. As to any transaction falling within the provisions both of this Act and of any other law requiring filing or recording, the entruster shall not be required to comply with both, but by complying with the provisions of either at his election may have the protection given by the law complied with; except that buyers in the ordinary course of trade as described in subsection two of section nine, and lienors as described in section eleven, shall be protected as therein provided, although the compliance of the entruster be with the filing or recording requirements of another law.

§ 17. Cases not provided for. In any case not provided for in this Act the rules of law and equity, including the law merchant, shall continue to apply to trust receipt transactions and purported pledge transactions not accompanied by delivery of possession.

§ 18. (Repealed by an Act approved June 16, 1953.)

§ 18.01. Where under the terms of a trust receipt transaction the trustee has no liberty of sale or other disposition or having liberty of sale or other disposition is to account to the entruster for the proceeds of any disposition of the goods, documents or instruments and where the trustee disposes of the goods, documents or instruments and wilfully and wrongfully fails to pay the entruster the amount due under the trust receipt, he is guilty of a felony and shall be imprisoned in the penitentiary for not less than one year nor more than 10 years. (As added by an Act approved June 16, 1953.)

§ 19. Uniformity of interpretation. This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

§ 20. Constitutionalty. If any provisions of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

§ 21. Provisions of Act controlling. Notwithstanding the provisions of any general or special law, the provisions of this Act shall control, *provided, however,* that this Act shall not affect transactions entered into before the effective date of this Act.

§ 22. This Act may be cited as the Uniform Trust Receipts **Act.**

COMPILED BY

CHARLES F. CARPENTIER

Secretary of State.

(79502)

14

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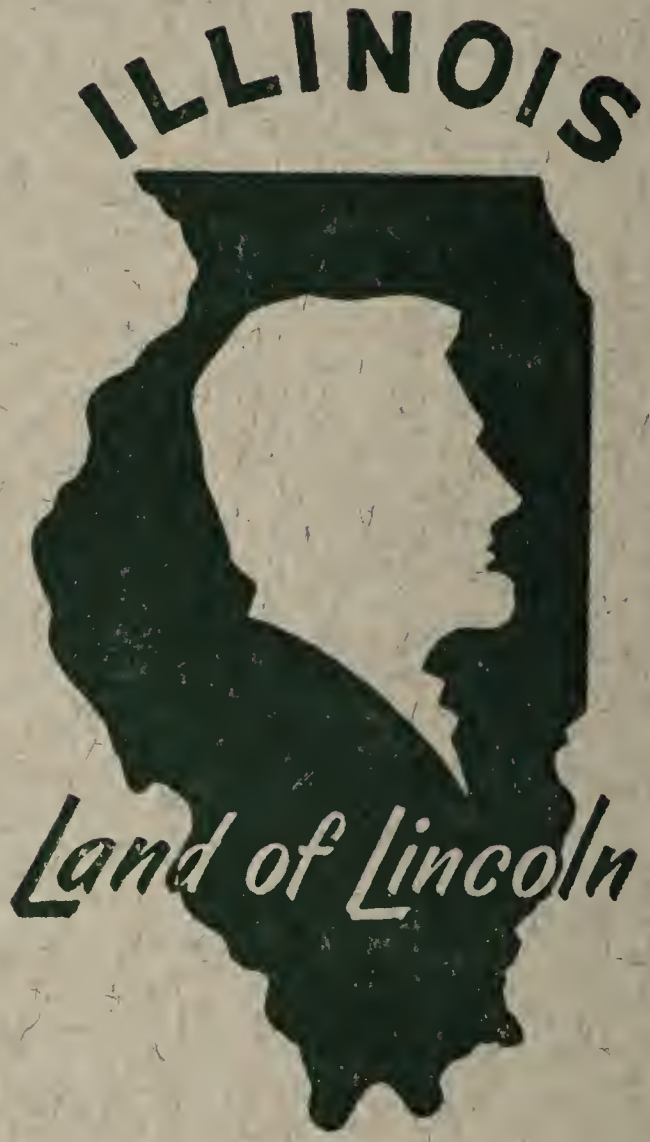
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